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Ohio, 660. Although representations as to value are held not to be ground for an action of deceit, *Doran v. Eaton*, 40 Minn. 35; it cannot be laid down as a rule of law that value is never a material fact. *Picard v. McCormick*, 11 Mich. 68. When representations of value are made as facts, they are binding as such, and not as mere expressions of opinion. *Murray v. Tolman*, 162 Ill. 417.

**PUBLIC OFFICERS—COUNTY TREASURER—FEES—ESTOPPEL.**—A county treasurer drew his salary as provided by act of 1891, which prohibited him from receiving any other compensation. Four days before his term of office expired, the act of 1891 was declared unconstitutional, and the treasurer filed his claim to additional fees, as provided by act of 1879, which claim was paid. An action was brought by the county to recover the money. *Held*, that having accepted and retained his salary as provided by an act of the legislature, he was estopped from questioning the validity of such act, and hence the county was entitled to recover the additional fees paid him. *Gross v. Board of Commissioners* (1902), — Ind. —, 64 N. E. Rep. 25.

The case presented is one in which an officer who holds office under a law which is declared unconstitutional, and is later held to be valid, seeks to recover fees under a former law during the time the first decision stands. It is unusual in that the officer has gained possession of the compensation given by both acts, and the State is the party seeking recovery. The decision of the court is based on the doctrine that "One who receives interest or consideration from an act of the legislature, should not be allowed to retain his advantage or keep his consideration, and then repudiate the act as unconstitutional." *Ferguson v. Landram*, 5 Bush, 230, 96 Am. Dec. 350.

**PUBLIC OFFICERS — REMOVAL—POWER OF GOVERNOR.**—Petitioner was elected sheriff, duly qualified and took office. Subsequently, charges alleging misconduct prior to his election, were presented, and the Governor, after a hearing, ordered his removal. Petitioner claims his removal was in violation of the provisions of the State constitution. The State constitution provides that the Governor may remove any officer (within a certain class) by giving to such officer a copy of the charges against him, and an opportunity of being heard in his defense. *Held*, that the power vested in the Governor to remove certain designated officers is executive, and not judicial, and the exercise of such power is not reviewable by the courts. *In re Guden, Sheriff*, (1902), — N. Y. —, 64 N. E. Rep. 451.

Chief Justice Parker, who wrote the decision, and with whom concurred a majority of the court, reviews the history of the adoption of the constitution of the State of New York. His decision is based on the evident intention of the framers of the constitution to vest in the Governor an absolute power of removal. Judge O'Brien concurred in the result reached, but by the following reasoning: That the court could inquire with reference to a single question, that of jurisdiction; that the power to inquire as to jurisdiction implies the right to examine into the nature of the charge, in order to see whether it is in any proper sense a charge within the meaning of the Constitution. Judge O'Brien finds that the charges were sufficient to confer jurisdiction. Although the reasoning of Chief Justice Parker may be accounted for by the peculiarities of the State constitution, it seems that the view taken by Judge O'Brien is more in the line of reason and more generally followed. *Fuller v. Attorney General*, 98 Mich. 101,

**REAL PROPERTY — ACTION TO QUIET TITLE — JURISDICTION OF FEDERAL COURTS — ENLARGEMENT OF EQUITY RIGHTS.**—Bill in equity filed in fed-

eral court for two purposes, (1) to quiet title to land, (2) for an injunction to restrain defendant corporation from cutting and removing timber on the land. Upon the ground that neither party was in possession of the land at the time of the commencement of the suit, defendant argued that plaintiffs had only a legal remedy. Plaintiffs relied upon a decision of the state supreme court for an enlargement of equitable principles. *Held*, that federal court was not bound by the decision of state courts on the matter of general law, but taking jurisdiction upon the second ground it could retain it for further relief by settling the question of title. *Peck v. Ayers & Lord Tie Co.* (1902), — C. C. A. —, 116 Fed. Rep. 273.

Defendant corporation urged that plaintiff had an adequate legal remedy by an action of ejectment under the statutes of Tennessee, which provided that if premises were not occupied an action might be brought "against any person claiming an interest therein or exercising acts of ownership at the commencement of the suit," and that by the Judiciary Act of 1789, suits in equity cannot be maintained in the courts of the United States where there may be a plain, adequate and complete remedy at law. The court declared: "This reference at law intends the remedy at common law, and as it existed at the date of the Judiciary Act, and does not refer to remedies which might be thereafter given by statutes of states in their own courts." It is well settled that at common law ejectment could not be maintained where defendant was not in possession. Defendant further maintained that it is a general rule of equity that in order to maintain a suit to clear title complainant must be in possession. The general equity principles however, having been enlarged by the state courts, the plaintiffs invoked the doctrine expressed in *Holland v. Challen*, 110 U. S. 15, to show that federal courts administer local laws and usages.

It is well recognized that, as a general rule, federal courts will, in the construction, operation and effect of state statutes, follow the decisions of state courts, and though this may, at times, involve inconsistencies, as when the state courts put different interpretations upon similar statutes, it is a necessary incongruity of our judicial system. *Leeper v. Texas*, 139 U. S. 462. But when, as in this case, the state court expressed itself upon a principle of general law, unchanged by legislative enactment, such decision established no precedent obligatory upon the federal courts, and "is a mere variation of decision." *Liverpool, etc. Nav. Co. v. Phenix Ins. Co.*, 129 U. S. 397. See also COOLEY ON CONSTITUTIONAL LAW, chap. vi.

**SALE—ORDER FOR GOODS—REVOCATION OF ORDER—DAMAGES.**—Defendants gave to plaintiff's salesman an order for goods to be shipped at once. The order was reduced to writing and signed by defendants and also, by the salesman, for the plaintiff. Below the names were the words, "This order not subject to countermand." A few minutes after thus giving the order defendants bought similar goods of another person and immediately went to plaintiff's salesman and countermanded the order and notified him that the goods would not be accepted if shipped. Defendants also immediately sent a letter of the same effect to the plaintiff, who received it before the goods ordered were separated from the common stock and delivered to the carrier for shipment. Plaintiff, nevertheless, shipped the goods to defendants, who refused to receive them and left them with the carrier, notifying plaintiff of such action. Plaintiff now sues to recover the price of the goods as upon a complete performance. *Held*, that plaintiff cannot recover. *Oklahoma Vinegar Co. v. Carter*, (1902), — Ga. —, 42 S. E. Rep. 378.

The court held that there was a complete contract created between the parties, which, without reference to the clause excluding the right to coun-